

ASSEMBLY BILL

No. 781

Introduced by Assembly Member Bocanegra

February 21, 2013

An act to add Sections 7153.6 and 55363.5 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 781, as introduced, Bocanegra. Sales and use taxes: fees: administration: violations for noncompliance: sales suppression devices.

Existing law requires the payment of taxes, fees, and surcharges that are administered by the State Board of Equalization under the provisions of the Sales and Use Tax Law and the Fee Collection Procedures Law, as prescribed.

This bill would, under those laws, provide that a person who knowingly sells, purchases, installs, transfers, or possesses in this state any automated sales suppression device or zapper or phantom-ware is guilty of a felony punishable by imprisonment for one, 3, or 5 years, and by a fine of not more than \$100,000. This bill would also provide that the person is liable for all taxes, interest, and penalties due as the result of the use of an automated sales suppression device or zapper or phantom-ware and is required to forfeit to the state all profits associated with the sale or use of an automated sales suppression device or zapper or phantom-ware. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7153.6 is added to the Revenue and
2 Taxation Code, to read:

3 7153.6. (a) Notwithstanding any other provision of this part,
4 a person who knowingly sells, purchases, installs, transfers, or
5 possesses in this state any automated sales suppression device or
6 zapper or phantom-ware is guilty of a felony punishable by
7 imprisonment pursuant to subdivision (h) of Section 1170 of the
8 Penal Code for one, three, or five years, and by a fine of not more
9 than one hundred thousand dollars (\$100,000). In addition, the
10 person shall be liable for all taxes, interest, and penalties due as
11 the result of the use of an automated sales suppression device or
12 zapper or phantom-ware and shall forfeit to the state all profits
13 associated with the sale or use of an automated sales suppression
14 device or zapper or phantom-ware.

15 (b) For purposes of this section:

16 (1) "Automated sales suppression device" or "zapper" means
17 a software program carried on a memory stick or removable
18 compact disc, accessed through an Internet link, or accessed
19 through any other means, that falsifies the electronic records of
20 electronic cash registers and other point-of-sale systems, including,
21 but not limited to, transaction data and transaction reports.

22 (2) "Electronic cash register" means a device that keeps a
23 register or supporting documents through the means of an
24 electronic device or computer system designed to record transaction
25 data for the purpose of computing, compiling, or processing retail
26 sales transaction data in whatever manner.

27 (3) "Phantom-ware" means a hidden, preinstalled, or installed
28 at a later time programming option embedded in the operating
29 system of an electronic cash register or hardwired into the
30 electronic cash register that can be used to create a virtual second
31 till or may eliminate or manipulate transaction records that may
32 or may not be preserved in digital formats to represent the true or
33 manipulated record of transactions in the electronic cash register.

1 (4) "Transaction data" includes information regarding items
2 purchased by a customer, the price for each item, a taxability
3 determination for each item, a segregated tax amount for each of
4 the taxed items, the amount of cash or credit tendered, the net
5 amount returned to the customer in change, the date and time of
6 the purchase, the name, address, and identification number of the
7 vendor, and the receipt or invoice number of the transaction.

8 SEC. 2. Section 55363.5 is added to the Revenue and Taxation
9 Code, to read:

10 55363.5. (a) Notwithstanding any other provision of this part,
11 a person who knowingly sells, purchases, installs, transfers, or
12 possesses in this state any automated sales suppression device or
13 zapper or phantom-ware is guilty of a felony punishable by
14 imprisonment pursuant to subdivision (h) of Section 1170 of the
15 Penal Code for one, three, or five years, and by a fine of not more
16 than one hundred thousand dollars (\$100,000). In addition, the
17 person shall be liable for all fees, interest, and penalties due as the
18 result of the use of an automated sales suppression device or zapper
19 or phantom-ware and shall forfeit to the state all profits associated
20 with the sale or use of an automated sales suppression device or
21 zapper or phantom-ware.

22 (b) For purposes of this section:

23 (1) "Automated sales suppression device" or "zapper" means
24 a software program carried on a memory stick or removable
25 compact disc, accessed through an Internet link, or accessed
26 through any other means, that falsifies the electronic records of
27 electronic cash registers and other point-of-sale systems, including,
28 but not limited to, transaction data and transaction reports.

29 (2) "Electronic cash register" means a device that keeps a
30 register or supporting documents through the means of an
31 electronic device or computer system designed to record transaction
32 data for the purpose of computing, compiling, or processing retail
33 sales transaction data in whatever manner.

34 (3) "Phantom-ware" means a hidden, preinstalled, or installed
35 at a later time programming option embedded in the operating
36 system of an electronic cash register or hardwired into the
37 electronic cash register that can be used to create a virtual second
38 till or may eliminate or manipulate transaction records that may
39 or may not be preserved in digital formats to represent the true or
40 manipulated record of transactions in the electronic cash register.

1 (4) “Transaction data” includes information regarding items
2 purchased by a customer, the price for each item, a taxability
3 determination for each item, a segregated tax or fee amount for
4 each of the items subject to the tax or fee, the amount of cash or
5 credit tendered, the net amount returned to the customer in change,
6 the date and time of the purchase, the name, address, and
7 identification number of the vendor, and the receipt or invoice
8 number of the transaction.

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.